

**STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE**

ROSEMARY KORT
[REDACTED]
[REDACTED]

Plaintiff

v.

MARATHON PETROLEUM CORPORATION
c/o CT Corporation System
4400 Easton Commons Way
Suite 125
Columbus, Ohio 43219

SUMMONS

Index No.: _____

SPEEDWAY LLC
c/o CT Corporation System
28 Liberty Street
New York, New York 10005

Defendants

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to Answer the Complaint in this action and to serve a copy of your Answer on Plaintiff's Attorneys within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service if this Summons is not personally delivered to you within the State) and in case of your failure to Answer, Judgment will be entered against you by default for the relief demanded in the Complaint. Plaintiff's Complaint against you is in excess of the jurisdictional limits of all lower Courts. Erie County is designated as the place of trial based upon Plaintiff's residence therein.

DATED: December 16, 2020

/s/ Duane D. Schoonmaker

Duane D. Schoonmaker, Esq.
WILLIAM MATTAR, P.C.
Attorneys for Plaintiff
Office and Post Office Address
6720 Main Street, Suite 100
Williamsville, New York 14221-5986
(716) 633-3535

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

ROSEMARY KORT

Plaintiff

v.

MARATHON PETROLEUM CORPORATION
SPEEDWAY LLC

Defendants

COMPLAINT

Index No.: _____

Plaintiff, ROSEMARY KORT, by her attorneys, William Mattar, P.C., as and for her
Complaint against the Defendants herein, alleges:

1. That at all times hereinafter mentioned Plaintiff, ROSEMARY KORT, was and is
a resident of the Village of Orchard Park, County of Erie and State of New York.

2. That at all times hereinafter mentioned, Defendant, MARATHON PETROLEUM
CORPORATION, is a foreign business corporation not licensed and authorized to conduct
business in the State of New York but which owns property in the State of New York, transacts
business in the State of New York, and expected, or should reasonably have expected, its acts to
have consequences in the State of New York and derive substantial revenue from interstate or
international commerce.

3. That at all times hereinafter mentioned, Defendant, SPEEDWAY LLC, was and is
a foreign limited liability company duly authorized to conduct business in the State of New York.

4. That upon information and belief, Defendant, SPEEDWAY LLC, was and is a gas
station and convenience store located at 4169 North Buffalo, in the Village of Orchard Park, County
of Erie, and State of New York.

5. That upon information and belief, at all times hereinafter mentioned, Defendant, MARATHON PETROLEUM CORPORATION owned the aforementioned premises located at 4169 North Buffalo, Village of Orchard Park, County of Erie, State of New York.

6. That upon information and belief, at all times hereinafter mentioned, Defendant, SPEEDWAY LLC, owned the aforementioned premises located at 4169 North Buffalo, Village of Orchard Park, County of Erie, State of New York.

7. That upon information and belief, at all times hereinafter relevant, Defendant, MARATHON PETROLEUM CORPORATION, owned, operated, and controlled Defendant, SPEEDWAY, LLC.

8. That at all times hereinafter mentioned, Defendant, MARATHON PETROLEUM CORPORATION, had a duty to maintain the premises located at 4169 North Buffalo, Village of Orchard Park, County of Erie, State of New York, including ensuring adequate and safe snow and ice removal and safe ingress and egress to the premises.

9. That at all times hereinafter mentioned, Defendant, SPEEDWAY LLC, had a duty to maintain the premises located at 4169 North Buffalo, Village of Orchard Park, County of Erie, State of New York, including ensuring adequate and safe snow and ice removal and safe ingress and egress to the premises.

10. That at all times hereinafter mentioned, Defendant, MARATHON PETROLEUM CORPORATION, had a duty to inspect the premises located at 4169 North Buffalo, Village of Orchard Park, County of Erie, State of New York, including inspections to determine the need for snow and ice removal and to ensure safe ingress and egress to the premises.

11. That at all times hereinafter mentioned, Defendant, SPEEDWAY LLC, had a duty to inspect the premises located at 4169 North Buffalo, Village of Orchard Park, County of Erie,

State of New York, including inspections to determine the need for snow and ice removal and to ensure safe ingress and egress to the premises

12. That at all times hereinafter mentioned, Defendant, MARATHON PETROLEUM CORPORATION, had a duty to repair the premises located at 4169 North Buffalo, Village of Orchard Park, County of Erie, State of New York, including ensuring safe ingress and egress to the premises.

13. That at all times hereinafter mentioned, Defendant, SPEEDWAY LLC, had a duty to repair the premises located at 4169 North Buffalo, Village of Orchard Park, County of Erie, State of New York, including ensuring safe ingress and egress to the premises.

14. That at all times hereinafter mentioned, Defendant, MARATHON PETROLEUM CORPORATION, hired employees and/or personnel for the purposes of maintaining, inspecting, and repairing said premises located 4169 North Buffalo, Village of Orchard Park, County of Erie, State of New York.

15. That at all times hereinafter mentioned, Defendant, SPEEDWAY LLC, hired employees and/or personnel for the purposes of maintaining, inspecting, and repairing said premises located 4169 North Buffalo, Village of Orchard Park, County of Erie, State of New York.

16. That upon information and belief and at all times hereinafter mentioned, the Defendant, MARATHON PETROLEUM CORPORATION, through their agents, servants, representatives and/or employees had actual notice and knowledge of the dangerous and defective conditions on the premises hereinafter mentioned, and/or created said dangerous conditions, and/or said conditions had existed for such a long period of time prior to the happening of this accident that Defendants could and should have had such knowledge and notice.

17. That upon information and belief and at all times hereinafter mentioned, the Defendant, SPEEDWAY LLC, through their agents, servants, representatives and/or employees had actual notice and knowledge of the dangerous and defective conditions on the premises hereinafter mentioned, and/or created said dangerous conditions, and/or said conditions had existed for such a long period of time prior to the happening of this accident that Defendants could and should have had such knowledge and notice

18. That on or about February 29, 2020, Plaintiff, ROSEMARY KORT, while lawfully upon the aforementioned premises slipped and fell while attempting to enter the premises due to an unsafe accumulation of snow and/or ice on the sidewalk and parking lot.

19. That as a result, Plaintiff, ROSEMARY KORT, suffered severe and permanent personal injuries.

20. That as a result, Plaintiff, ROSEMARY KORT, incurred medical expenses and will continue to incur medical expenses into the future.

21. That as a result of the foregoing, Plaintiff, ROSEMARY KORT, was otherwise injured and damaged, all to her damage in a sum in excess of the jurisdictional limits of the lower courts of the State of New York.

22. That upon information and belief this action falls within one or more of the exceptions enumerated in Article 16 of the CPLR and/or said article is inapplicable to the within action.

SECOND CAUSE OF ACTION

23. Plaintiff repeats and re-alleges paragraphs “1” through “22” above.

24. That the Defendant, MARATHON PETROLEUM CORPORATION, through its agents, servants, and employees, negligently carelessly, and recklessly maintained, inspected, and

maintained the premises located 4169 North Buffalo, Village of Orchard Park, County of Erie, State of New York.

25. That Defendant, MARATHON PETROLEUM CORPORATION's, negligence, carelessness and recklessness was a substantial factor in causing the injuries and damages of Plaintiff, ROSEMARY KORT.

THIRD CAUSE OF ACTION

26. Plaintiff repeats and re-alleges paragraphs "1" through "25" above.

27. That the Defendant, SPEEDWAY LLC, through it agents, servants, and employees, negligently carelessly, and recklessly maintained, inspected, and maintained the premises located 4169 North Buffalo, Village of Orchard Park, County of Erie, State of New York.

28. That the Defendant, SPEEDWAY LLC's, negligence, carelessness and recklessness was a substantial factor in causing the injuries and damages of Plaintiff, ROSEMARY KORT.

WHEREFORE, the Plaintiff, ROSEMARY KORT, demands Judgment against Defendants, MARATHON PETROLEUM CORPORATION and SPEEDWAY LLC, jointly and/or severally, herein in an amount that exceeds the jurisdictional limits of all lower Courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

DATED: December 16, 2020

/s/ Duane D. Schoonmaker

Duane D. Schoonmaker, Esq.
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